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RIGHT TO BEAR ARMS UNDER THE CONNECTICUT CONSTITUTION

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You asked for a brief summary of cases interpreting the state constitution's right to bear arms provision.

SUMMARY

The Connecticut Constitution states, "Every citizen has a right to bear arms in defense of himself [or herself] and the state" (Art. I, § 15). This differs from the U.S. Constitution's 2nd Amendment which states, "A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed."

The Connecticut constitutional provision has not changed since it was adopted in 1818 as part of the state's first constitution. It was copied from Mississippi's 1817 constitution (Horton, *Connecticut State Constitution: A Reference Guide*, 1993).

Generally, Connecticut courts have upheld reasonable restrictions on the Connecticut Constitution's right to bear arms. The cases in which restrictions or regulations have been allowed include those construing the state's authority to (1) ban the sale of assault weapons, (2) limit a person's right to carry a gun under permitting statutes, and (3) limit the possession of guns by felons. A Superior Court decided the oldest and latest cases in 1979 and 2011, respectively. The State Supreme Court decided two cases in 1988 and 1995.

Below we provide brief summaries of the portions of these cases discussing the right to bear arms.

SUPREME COURT CASES

Benjamin v. Bailey

In *Benjamin v. Bailey*, the Connecticut Supreme Court upheld the constitutionality of the statutes that ban the sale, possession, and transfer of assault weapons ([CGS §§ 53a-202a to -202k](#)).

The plaintiff's first contention was that the statutory ban on assault weapons violates the constitutional right to bear arms and as such should be declared unconstitutional because it fails to satisfy strict scrutiny. By phrasing their argument in this way, the court found that the plaintiffs glossed over the crucial first step in the constitutional analysis. Before deciding the standard of judicial scrutiny to be applied, the court stated that there must first be an injury or infringement of a constitutional right (*Campbell v. Board of Education*, 193 Conn. 93 (1984)). Only if the statute infringes on an interest in bearing arms that is protected by the state constitution, the court stated, would the court have to decide the level of justification the state would have to proffer to support such an infringement.

The court found that the state constitution confers on a citizen the right to bear arms only "in defense of himself and the state." Additionally, in *State v. Bailey*, the court stated that "it is beyond serious dispute that the legislature has the authority to place reasonable restrictions on a citizen's right to bear arms."

The court found that the constitution protects each citizen's right to possess a weapon of reasonably sufficient firepower to be effective for self-defense but that it does not guarantee the right to possess any weapon of an individual's choosing for such use. Thus, the court held that as long as citizens have available to them some types of weapons that are adequate reasonably to vindicate the right to bear arms in self-defense, the state can prohibit the possession of others. The court next determined whether the weapons ban infringes on the constitutional right to bear arms. It concluded that the ban is not an infringement because it continues to permit access to a wide array of weapons. According to the court, the facts as the trial court found them showed that assault weapons pose an increasing risk to society, including police officers and innocent victims. Thus, the ban serves a legitimate interest of the state acting pursuant to its police power (*Plourde v. Liburdi*, 207 Conn. 412, 419 (1988)). The court

also noted the fact that the trial court specifically discredited testimony offered to establish that the weapons subject to the ban had legitimate self-defense qualities. Lastly, the court found that the ban does not cover a significant percentage of firearms that continue to be available for citizens to possess, thus, the ban is sufficiently circumscribed so as not to intrude upon the constitutional interests involved.

Having decided that the statutory ban on assault weapons did not infringe on the constitutional right to bear arms, the court found it unnecessary to consider the plaintiffs' argument regarding the level of judicial scrutiny to be applied if an infringement existed.

In a footnote, the court stated that it did not address a claim involving the right to bear arms in defense of the state and it did not consider whether a different analysis might apply to such a claim (234 Conn. 455 (1995)).

For more information, see [OLR Report 95-R-1274](#).

State v. Bailey

The defendant was convicted of a number of crimes including carrying a pistol without a permit ([CGS § 29-35](#)). The defendant argued the jury should have received an instruction that self-defense could be a defense to this charge. He argued that if the permitting statute prohibited carrying a gun in self-defense, it infringed the constitutional right to bear arms.

The Supreme Court stated that the legislature can place reasonable restrictions on the right to bear arms. It stated that the permitting statute does not forbid people from carrying a pistol to protect themselves and placed reasonable limitations on that right. The court added that the statute permits carrying a pistol at home without a permit. The court stated, "Rather than leaving to the courts the troublesome task of deciding after the fact whether the person carrying the pistol was a "reasonable" person, however, the legislature has chosen instead to require licensing to preempt the possibility that unstable or irresponsible individuals may carry pistols."

The court concluded that the self-defense statutes can justify a person's use of force but they were not relevant to a case involving carrying a weapon rather than using one (209 Conn. 322 (1988)).

APPELLATE COURT

State v. Abraham

This case involved a jury instruction on self-defense. The trial judge's instruction stated that the statutes prohibit a person from claiming self-defense when he or she used force after agreeing to engage in combat. The defendant argued that the instruction violated his constitutional right to carry a firearm in self-defense. The court stated that the right to bear arms is subject to reasonable regulation. It stated that the legislature defined the circumstances where a person would be justified in using physical force in the self-defense statute and the instruction did not violate the right to bear arms (84 Conn.App. 551 (2004)).

State v. Banta

In a case before the Connecticut Supreme Court's rulings in *Benjamin* and *Bailey*, the Appellate Court considered whether the statute that punishes possession of a pistol by a felon violated the right to bear arms ([CGS § 53-217](#)). The court stated that the constitutional claim was not raised at trial and it declined to address it on appeal because a limited review of the record showed that the claim was not of true constitutional proportion. The court stated that even if it assumed that the constitution provided an individual right to possess a pistol, similar constitutional provisions in other states had been interpreted to be subject to reasonable limitations. The court stated that the defendant did not show that the statute at issue was unreasonable. The court also found no factual support in the record for the claim that the statute violated the right to possess a pistol for self-defense (15 Conn.App. 161 (1988)).

SUPERIOR COURT

Permitting Process and Permit Revocation

In a number of cases, Superior Court judges ruled that the pistol permitting statutes, and revocations of permits by the Board of Firearms Permit Examiners, were a reasonable restriction on the right to bear arms under the state constitution (*Jukna v. Board of Firearms Permit Examiners*, unreported, 1998 WL 764447 (1998); *Thomson v. Board of Firearms Permit Examiners*, unpublished, 1996 WL 24701 (1996); *Johnsey v. Board of Firearms Permit Examiners*, 1991 WL 28847 (1991)).

In one Superior Court case, the judge recognized the importance of the decision to revoke a permit and required the Board of Firearms Permit Examiners to make findings and explain its reasons for revoking a permit. The court stated that the board's decision implicates significant questions of private and public concern, from a citizen's right to bear arms under the federal and state constitutions to the public's right to be free from the danger inherent in allowing irresponsible individuals to carry firearms abroad (*Vigneri v. Board of Firearms Permit Examiners*, unreported, 1997 WL 208006 (1997)).

Rabbit v. Leonard. Another Superior Court case considered whether the permit revocation process satisfies due process. In this case, a plaintiff argued that the revocation of his pistol permit without prior notice and a hearing violated his fundamental right to bear arms. The court found that it "appears a Connecticut citizen...has a fundamental right to bear arms in self-defense" and this is a liberty interest that requires protection by procedural due process.

The court stated that the process due depends on the facts of each situation and the court must consider the private interest at stake, the risk of erroneously depriving a person of the interest, the probable value of more or different procedures, and the government's interests including the function and administrative and fiscal burdens of different procedures. The court then reviewed the statutory revocation procedures which allow summary revocation for cause but require notice of the action and an opportunity for a hearing on the revocation before the Board of Firearms Permit Examiners.

On the different due process considerations, the court found:

1. the plaintiff's private interest was important but not substantial unless the person needed a weapon for his livelihood or it was absolutely necessary for self-defense;
2. when post-deprivation review is available to correct errors, generally pre-deprivation procedures must only provide a reasonably reliable basis to conclude that the facts are as a responsible government official warrants (the court found the revoking local authority would be the official who would become aware of cause to revoke a permit and they are responsible people who presumably do their best to ascertain facts when revoking a permit);

3. pre-revocation notice and hearing could cause a long delay before revocation, time is of the essence regarding carrying dangerous weapons, and a person can request a hearing quickly to correct an error within a reasonable time which provides a reasonably reliable procedure to check the validity of facts; and
4. the government's interest is in protecting the general public from individuals whose conduct shows them to be lacking the essential character or temperament to be entrusted with a weapon, reasonable gun control legislation is within the police power of a legislative body, and any such restriction is a restraint or burden on the individual but the government's interest on balance is paramount.

The court concluded that the summary nature of permit revocation is vital to protect public safety. A permittee who is unfit could do a great deal of harm if given advance notice of revocation and the risk is too great. The court found that the statutes satisfy procedural due process requirements (36 Conn.Supp. 108 (1979)).

Wrongful Termination

Winters v. Concentra Health Services, Inc. A court can find an employer wrongfully terminated an employee if the employer violated an explicit statutory or constitutional provision or a judicially-conceived notion of public policy. This is an exception to the general rule that at-will employees (those not on a contract) can be fired for any reason.

In this case, the employee argued he was an at-will employee who was terminated for carrying a lawfully concealed firearm to work and his termination, in the absence of a clearly established company policy prohibiting him from carrying the weapon, violated his fundamental right to possess firearms for self-defense under the state constitution.

The court stated that the Connecticut Supreme Court had recognized the right to bear arms as embodying a public policy that is not easily abrogated. Because of this, the Superior Court allowed the employee to pursue his claim. The court noted that the constitution does not prevent a private landowner from prohibiting the otherwise lawful possession of firearms on his or her land and the existence of a company policy and the employee's knowledge of it would be important in the case. The court rejected the employer's argument that the public policy of allowing qualified citizens to carry firearms for self-defense was in tension with a public policy obligating employers to provide a safe work place (unreported, 2008 WL 803134 (2008)).

Bail

State v. Doutel. Another Superior Court judge upheld a restriction on the right to bear arms as a condition of bail to ensure the safety of others, based on the facts of the case (unpublished, 2011 WL 6270742 (2011)).

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